

66-1152/1

OGC 66-0596

16 March 1966

OGC Has Reviewed

MEMORANDUM FOR: Director of Central Intelligence

**SUBJECT: Transmission of Information to the President's
Foreign Intelligence Advisory Board**

1. This memorandum is for information.

2. Conclusions:

a. There is no statutory basis for withholding Agency information relating to foreign intelligence matters which the President's Foreign Intelligence Advisory Board may require.

b. You have a right to prescribe what security protection will be given to any such classified information.

c. I believe you have a right to question the Board's need to know in appropriate cases, although the final determination is the Board's prerogative.

3. Discussion:

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b. The basic regulation on the protection of classified information is Executive Order 10501, which places responsibility for the protection of such information on the head of the department or agency concerned. It also established in section 7 the need-to-know principle and the requirement for security clearances for recipients of classified information. It also recognizes in section 12 the primacy of any statutory requirements. Finally, NSCID No. 1, section 5, provides that the DCI, with the assistance and support of USIB, shall ensure the development of policies and procedures for the protection of intelligence and intelligence sources and methods from unauthorized disclosure.

c. Executive Order 10938, which sets up the PFIAB, provides that the DCI shall make available to the Board any information with respect to foreign intelligence matters which the Board may require for the purpose of carrying out its responsibilities to the President. These responsibilities are to advise the President with respect to the objectives and conduct of the foreign intelligence and related activities of the United States, and the Board is directed to conduct a continuing review and assessment of all functions of the Central Intelligence Agency, and other departments or agencies with similar responsibilities, and to report thereon to the President. Consequently, the transmission of any information concerning the Agency and its intelligence activities which the Board may require would be authorized under the statutory and regulatory responsibilities of the DCI.

d. The Executive Order establishing the Board provides that information so supplied to the Board shall be afforded physical security protection as prescribed by the provisions of applicable laws and regulations. This, I believe, gives the DCI the right to limit at least to some extent the form in which the information is given and the use to which it is put. I believe, for instance, he could prescribe that specified categories of very sensitive information supplied in writing could not be taken outside the United States and must, of course, be given adequate physical protection while

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in the custody of the Board. I believe he could prescribe that people in possession of certain categories of highly sensitive information would have to take specified security precautions as to their persons, including perhaps denial of travel in certain areas for established periods of time.

e. Finally, I believe the DCI could in appropriate cases question whether the Board had a need to know certain specific information. Assume, for instance, that the Board were to ask for the true identities and locations of all espionage and counterespionage agents. The Director could well raise the question of what purpose this information would serve, but since the Executive Order requires him to make available any information which the Board may require, in the end the DCI would either have to acquiesce to the Board's request or appeal to the President.

s/

LAWRENCE R. HOUSTON
General Counsel

cc: DDCI
D/DCI/NIPE
DDP
DDI
DBS
DBS&T

MEMORANDUM FOR: THE DIRECTOR

You requested a statement of the law in regard to withholding information from the PFIAB. This paper is not the answer you would like to have but is, I believe, an accurate reflection of the situation under current law and regulations. I recommend arguing the point on practical security grounds rather than on legalities.

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LAWRENCE R. HOUSTON
General Counsel

16 March 1966
(DATE)

cc: DDCI

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

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